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September 24, 1996

Members, Delta Protection Commission
Delta Protection Commission
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**VIA FACSIMILE
AND REGULAR MAIL**

**Re: Revised Staff Report on Proposed Adoption of Utilities and
Infrastructure Policy P-3**

Dear Commissioners:

We received your staff's "Revised Staff Report on Proposed Adoption of Utilities and Infrastructure Policy P-3 in the Form of a Regulation as an Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta" ("Revised Staff Report") dated September 13, 1996. As a threshold matter, we regret that the Commission Staff would see fit to provide less than 10 calendar days of public review of this 54-page Report, including appendices and response to previous public comments. It is obvious that the meager time allowed to review the Revised Staff Report is intended to thwart any real public review and response to the Commission's proposed action.

More importantly, however, we regret that the Commission Staff has recommended to the Commission a course of action which is illegal, environmentally unsound, and completely unsupported by the alleged "environmental review" conducted by the Staff. We have serious differences with a great deal of the misinformation contained in the Revised Staff Report, but considering the limited amount of time within which to review and respond to the Revised Staff Report, we are compelled to limit our comments to those contained herein. We do so, however, without waiving any legal rights to challenge the insufficiency of any aspect of the Revised Staff Report and/or the Commission's expected rubber-stamp of the Staff recommendation.

Our comments relate to the inadequate alternatives review conducted by the Commission Staff, and the misstatements and erroneous conclusions contained in the Revised Staff Report to justify an erroneous finding that one of the alternatives considered is environmentally inferior to the recommended adoption of P-3. As you know, Wheelabrator Clean Water Systems ("Bio Gro") has closely monitored the development of P-3 and has offered several, serious alternative proposals to the current version of P-3 in an effort to work cooperatively with the Commission. Most recently, representatives of Bio Gro met with the Commission's Executive Director and Legal Counsel on April 17, 1996 and suggested an alternative regulation that more than adequately addressed the legitimate concerns expressed by members of the Commission in the past concerning the agronomic

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application of biosolids to land in the Commission's jurisdiction. That proposal contained a three-part conditional allowance for such biosolids land application, as follows:

(a) biosolids shall comply with all requirements set forth in 40 CFR Part 503 regarding beneficial use, and shall also comply with the labeling requirements of the California Department of Food and Agriculture for fertilizer material;

(b) biosolids may only be applied to lands within the Delta Primary Zone upon the issuance of and in accordance with permits issued by the California Regional Water Quality Control Board and/or by the appropriate local government agency with jurisdiction over beneficial use projects. Permits issued for the application of biosolids within the Delta Primary Zone shall take into consideration the unique aspects of the Delta, and shall include provisions to protect public health, groundwater and surface water. Specific concerns of the Delta which shall be considered include, but are not limited to, high salinity levels, high water table, and the presence of highly organic soils; and

(c) biosolids may not be applied within the Delta Primary Zone to lands which must be mechanically drained on a year-round basis in order to maintain a depth-to-groundwater of at least twenty-four (24) inches, where such lands contain organic soil associations of the Delta region as identified by USDA county soil surveys, or which lie below sea level or are less than twenty-four (24) inches above groundwater at the time of application.

The Revised Staff Report argues that this proposal "would be less effective in meeting the Commission's mandates and more expensive and more burdensome to those who would need to comply with it." (Revised Staff Report at p. 19.) The essence of this argument seems to be that adopting a regulation that has minimum depth-to-groundwater requirements has too many technical impediments to work effectively. In point of fact, long-established companies such as Bio Gro have many years' experience in working under strict local and regional conditions that require adherence to very specific technical standards. In fact, the Central Valley Regional Board Order referenced in the Revised Staff Report contains many such technical requirements and restrictions on biosolids land application, including a depth-to-groundwater limitation.¹ Obviously, since the agency delegated by the California Legislature with authority to make water-quality decisions in the Sacramento-San Joaquin Delta Region considers such depth-to-groundwater parameters as appropriate and

¹ Contrary to the implication contained in the Revised Staff Report, the CVRWQCB General Order was merely remanded to the Regional Board for preparation of an environmental impact report prior to approving sites under the General Order. The State Board did not prohibit the application of biosolids under individual, site-specific environmental review. In fact, the Revised Staff Report itself acknowledges that the conditions and limitations contained in the General Order "are still in use by the (CVRWQCB) staff in review of Individual Waste Discharge permits for new sludge application projects." (Revised Staff Report at p. 11.)

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enforceable, it would seem logical, appropriate and legally required that the Delta Protection Commission do so as well.

By making the arguments against the proposed language offered by Bio Gro, the Commission Staff seem to have lost sight of its legal authority and charge under the Delta Protection Act: to adopt a comprehensive land use and resource management plan for the Primary Zone of the Delta, which in turn is to be implemented by individual cities and counties within the Primary Zone. The Commission is not authorized to, charged with, nor qualified to make policy decisions related to technical water quality issues. It is obvious that, in its zeal to erect a partial and preferential ban on biosolids application in the Primary Zone, the Commission Staff has lost all credible objectivity in this regard.

The Revised Staff Report's conclusion that Bio Gro's suggested alternative "would be less effective in meeting the Commission's mandates," contains no evidence supporting this position. The primary objections to Bio Gro's proposed alternative relate to alleged expense and burdens imposed on those wishing to apply biosolids on their farms in compliance with the regulation. It is ironic that the Commission Staff now purports to be concerned with the expense and burdens on land appliers, farmers and POTWs established by the Commission's unwise and illegal effort to impede a legitimate agricultural practice in the Delta. If biosolids land appliers must incur additional expense and take extra precautions related to depth-monitoring and the like in order to comply with the regulation, such land appliers will make one of two choices: either incur those expenses and burdens, or simply not apply biosolids at those sites in the Primary Zone. In either case, however, it is clear that these choices are either equal to or more environmentally protective than the current proposed regulation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig S.J. Johns", with a long horizontal flourish extending to the right.

Craig S.J. Johns

CSJJ:bs

